

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Daniel Giansante	Team: Squad #8	CCRB Case #: 201706811	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 03/25/2017 1:40 AM	Location of Incident: Rockland Avenue and St. Andrews Road; 122nd Precinct stationhouse	Precinct: 122	18 Mo. SOL 9/25/2018	EO SOL 9/25/2018	
Date/Time CV Reported Thu, 08/17/2017 4:15 PM	CV Reported At: Office of City Council member	How CV Reported: In-person	Date/Time Received at CCRB Thu, 08/17/2017 4:15 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Aldo Yubini	08600	939729	122 PCT
2. POF Stephanie Bowman	09173	948049	122 PCT
3. An officer			122PCT
4. SGT Albert Cabello	02759	938140	122 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Aldo Yubini	Abuse: At Rockland Avenue and St. Andrews Road in Staten Island, Police Officer Aldo Yubini frisked § 87(2)(b)	
B.POM Aldo Yubini	Abuse: At Rockland Avenue and St. Andrews Road in Staten Island, Police Officer Aldo Yubini searched § 87(2)(b)	
C.POM Aldo Yubini	Abuse: At Rockland Avenue and St. Andrews Road in Staten Island, Police Officer Aldo Yubini frisked § 87(2)(b)	
D.POM Aldo Yubini	Abuse: At Rockland Avenue and St. Andrews Road in Staten Island, Police Officer Aldo Yubini searched § 87(2)(b)	
E.POF Stephanie Bowman	Abuse: At Rockland Avenue and St. Andrews Road in Staten Island, Police Officer Stephanie Bowman frisked § 87(2)(b)	
F.POF Stephanie Bowman	Abuse: At Rockland Avenue and St. Andrews Road in Staten Island, Police Officer Stephanie Bowman searched § 87(2)(b)	
G.POM Aldo Yubini	Abuse: At Rockland Avenue and St. Andrews Road in Staten Island, Police Officer Aldo Yubini searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
H.POF Stephanie Bowman	Abuse: At Rockland Avenue and St. Andrews Road in Staten Island, Police Officer Stephanie Bowman searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
I.SGT Albert Cabello	Abuse: At Rockland Avenue and St. Andrews Road in Staten Island, Sergeant Albert Cabello detained § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
J.SGT Albert Cabello	Abuse: At Rockland Avenue and St. Andrews Road in Staten Island, Sergeant Albert Cabello detained § 87(2)(b)	
K.SGT Albert Cabello	Abuse: At Rockland Avenue and St. Andrews Road in Staten Island, Sergeant Albert Cabello detained § 87(2)(b)	
L.SGT Albert Cabello	Abuse: At the 122nd Precinct stationhouse, Sergeant Albert Cabello strip-searched § 87(2)(b)	
M.SGT Albert Cabello	Abuse: At the 122nd Precinct stationhouse, Sergeant Albert Cabello strip-searched § 87(2)(b)	
N.SGT Albert Cabello	Abuse: At the 122nd Precinct stationhouse, Sergeant Albert Cabello strip-searched § 87(2)(b)	
O. An officer	Abuse: At the 122nd Precinct stationhouse, an officer threatened § 87(2)(b) with the use of force.	
P.SGT Albert Cabello	Abuse: At Rockland Avenue and St. Andrews Road in Staten Island, Sergeant Albert Cabello seized § 87(2)(b)s property.	
§ 87(4-b), § 87(2)(g)		

### Case Summary

On August 17, 2017, § 87(2)(b) and § 87(2)(b) filed the following complaint in person at the office of Councilwoman Debi Rose.

On March 25, 2017, at approximately 1:40 a.m., in the vicinity of the intersection of Rockland Avenue and St. Andrews Road in Staten Island, Police Officer Aldo Yubini and Police Officer Stephanie Bowman of the 122<sup>nd</sup> Precinct stopped a vehicle driven by § 87(2)(b). PO Bowman has since changed her last name and is now known as PO Mazza. As she was known as PO Bowman at the time of the incident, she is referred to by that name throughout this report. § 87(2)(b) and § 87(2)(b) were passengers in the vehicle. PO Yubini observed an open alcohol container in the vehicle and ordered all three occupants to exit. PO Yubini frisked § 87(2)(b) and § 87(2)(b) (**Allegations A & C: Abuse of Authority, § 87(2)(g)**). PO Yubini allegedly searched § 87(2)(b) and § 87(2)(b) (**Allegations B & D: Abuse of Authority, § 87(2)(g)**). PO Bowman frisked § 87(2)(b) (**Allegation E: Abuse of Authority, § 87(2)(g)**). PO Bowman allegedly searched § 87(2)(b) (**Allegation F: Abuse of Authority, § 87(2)(g)**). PO Yubini and PO Bowman allegedly searched § 87(2)(b)'s vehicle (**Allegations G-H: Abuse of Authority: § 87(2)(g)**). Sergeant Albert Cabello, also of the 122<sup>nd</sup> Precinct, decided to detain § 87(2)(b) and § 87(2)(b) and to transport them to the 122<sup>nd</sup> Precinct stationhouse to issue them summonses for the open container in the vehicle (**Allegations I-K: Abuse of Authority, § 87(2)(g)**).

At the 122<sup>nd</sup> Precinct stationhouse, Sgt. Cabello authorized strip searches of § 87(2)(b) and § 87(2)(b) (**Allegations L-N: Abuse of Authority, § 87(2)(g)**). An unidentified officer allegedly pointed a Taser at § 87(2)(b) during his strip search and threatened to shoot him with it if § 87(2)(b) made any "wrong moves" (**Allegation O: Abuse of Authority, § 87(2)(g)**). § 87(2)(b)'s vehicle was driven back to the stationhouse, and was eventually seized and vouchered (**Allegation P: Abuse of Authority, § 87(2)(g)**).

§ 87(4-b), § 87(2)(g)

§ 87(2)(b) and § 87(2)(b) were all arrested (BR01).

The investigation did not obtain any video footage.

### Potential Issues

§ 87(2)(b) filed two other complaints at the same time that he filed this complaint (CCRB #§ 87(2)(b)). In all three incidents, officers stopped a vehicle containing § 87(2)(b) and found narcotics on his person or in the vehicle. § 87(2)(b) steadfastly denied that officers found any contraband in any of the incidents. He claimed that multiple officers were present at more than one of the incidents, and implied that officers were specifically targeting him with false criminal allegations. In fact, no officers appeared in more than one incident, and each incident involved officers from different commands. Officers vouchered narcotics in all three incidents, and § 87(2)(b) was eventually charged with drug possession in all three resulting criminal cases. In addition, in #§ 87(2)(b) a witness who was in § 87(2)(b)'s vehicle recounted hearing § 87(2)(b) tacitly admit to an officer that there were pills in his vehicle. § 87(2)(g)

## Findings and Recommendations

- **Allegation (A) Abuse of Authority: At Rockland Avenue and St. Andrews Road in Staten Island, Police Officer Aldo Yubini frisked § 87(2)(b)**  
**Allegation (B) Abuse of Authority: At Rockland Avenue and St. Andrews Road in Staten Island, Police Officer Aldo Yubini searched § 87(2)(b)**  
**Allegation (C) Abuse of Authority: At Rockland Avenue and St. Andrews Road in Staten Island, Police Officer Aldo Yubini frisked § 87(2)(b)**  
**Allegation (D) Abuse of Authority: At Rockland Avenue and St. Andrews Road in Staten Island, Police Officer Aldo Yubini searched § 87(2)(b)**  
**Allegation (E) Abuse of Authority: At Rockland Avenue and St. Andrews Road in Staten Island, Police Officer Stephanie Bowman frisked § 87(2)(b)**  
**Allegation (F) Abuse of Authority: At Rockland Avenue and St. Andrews Road in Staten Island, Police Officer Stephanie Bowman searched § 87(2)(b)**

It is undisputed that PO Yubini frisked § 87(2)(b) and § 87(2)(b) and that PO Bowman frisked § 87(2)(b).

In his CCRB interview, § 87(2)(b) recounted that PO Yubini came to his window after pulling him over and requested his license, registration, and insurance (BR02). § 87(2)(b) complied, and PO Yubini informed him that his license plate light was out. PO Yubini then instructed all three men to exit the vehicle and stand at its trunk. PO Yubini told § 87(2)(b) to put his hands on the car and to spread his legs, and he then patted the outside of § 87(2)(b)'s clothing and entered his pockets. He removed § 87(2)(b)'s wallet. PO Bowman performed the same actions on § 87(2)(b) and § 87(2)(b) and she removed phones, wallets, and keys from their pockets. § 87(2)(b) also alleged that, after the officers searched inside his vehicle, PO Yubini searched his person again, and PO Bowman searched § 87(2)(b) and § 87(2)(b) again.

§ 87(2)(b) recounted that the officers eventually told him that he and his companions were being detained because they had an open container of alcohol in the vehicle. He denied during the CCRB interview that there was any such open container in the vehicle. During a subsequent phone statement, § 87(2)(b) acknowledged that, at the time of the stop, the cup-holders in his vehicle contained clear plastic cups with dark brown liquid in them (BR03). The cups had plastic tops with straws inserted through them. § 87(2)(b) insisted that the cups contained iced tea. He then spontaneously recounted that, at the moment PO Yubini instructed the men to exit the vehicle, he pointed to the cups and said, "You have open containers." § 87(2)(b) protested to PO Yubini, "This is juice in this cup." During the later phone statement, § 87(2)(b) recounted that, at the time of the stop, he and his friends were driving to a strip club.

The investigation contacted § 87(2)(b) by phone multiple times, but he refused to provide a statement about the incident. The investigation was unable to locate § 87(2)(b).

During his CCRB interview, PO Yubini recounted that he ran searches for § 87(2)(b)'s vehicle's license plate before he stopped the vehicle, and that through such searches he learned that § 87(2)(b) had an open I-card (BR04). He was not certain, but thought the I-card was "§ 87(2)(f) § 87(2)(b)." PO Yubini could provide no further information about the I-card. He said that finding the I-card made him think, "This is looking bad," and also made him think, "You gotta be careful now."

PO Yubini recounted that, as soon as he approached the vehicle, he saw a half-full 750ml bottle of Hennessy on the floor in the backseat near § 87(2)(b) § 87(2)(b) had a cup in his

hand, there were two cups in the center console, and there was another in the front passenger door. The cups were clear and had lids with straws. They contained opaque liquid. PO Yubini asked § 87(2)(b) about the alcohol, and § 87(2)(b) said, “Ahh, you know man, just having fun.” When asked why he wanted all three men to exit the vehicle, PO Yubini explained, “I’m not gonna take the driver out and leave them in the car free to do whatever.”

PO Yubini admitted that he frisked § 87(2)(b) and § 87(2)(b) by patting their waistbands and feeling down their legs. In recounting the moment when he escorted the men to the rear of the vehicle, PO Yubini said, “And obviously you do a quick frisk, one at a time—make sure they have no weapons on their waistband.” When asked why he frisked the men, PO Yubini replied, “For weapons. To make sure there’s no weapons.” When asked if he actually suspected that the men possessed weapons, PO Yubini replied, “Well, like, with everybody—every car stop I do, right, if some reason you have to come out, any confrontation I’m gonna have with somebody, I make sure nobody has weapons.” PO Yubini explicitly confirmed that, whenever he stops a vehicle and has an individual exit from that vehicle, he frisks that individual for weapons. When asked again if he had any specific reason to suspect that § 87(2)(b) or § 87(2)(b) possessed a weapon, PO Yubini noted that § 87(2)(b) had an I-card for § 87(2)(f) but provided no other specific reasons. He ultimately reiterated that he simply wanted to ensure that the men did not have any weapons.

PO Yubini denied that he searched § 87(2)(b) or § 87(2)(b) at the time that he frisked them. He recounted that PO Bowman frisked § 87(2)(b)’s waistband, and denied that she searched § 87(2)(b).

PO Yubini did not vouch for the open container of alcohol. He explained that he photographed the bottle and cups before disposing of them, and he relayed the photographs to the District Attorney’s office. He claimed that the alcohol could not be vouchered because it was “consumable.”

PO Bowman recounted that she was not even aware that PO Yubini was going to stop § 87(2)(b)’s vehicle until PO Yubini activated the RMP’s emergency lights (BR05). PO Yubini did not explain what was going on, and PO Bowman was simply following his lead as she approached the passenger side of the vehicle. PO Bowman noted in her memo book that PO Yubini observed an open 750ml bottle of Hennessy in the vehicle (BR06). She also initially recounted during the interview that she saw an open container when she approached the passenger side of the vehicle.

When later asked to describe what she saw when she reached the front passenger window, PO Bowman recounted, “I remember seeing, like, cups. Cups, and then I know there was open alcohol [*sic*] in there.” However, she now said that she could not recall if she actually saw the open bottle of Hennessy at the time she first approached the vehicle. She confirmed that she definitely saw the bottle at some point during the incident, but she could not recall when she first saw it. She could provide no explanation for how she determined that the bottle was opened, and when asked if she personally made the determination that the bottle was opened, PO Bowman replied, “We just asked them to step out of the car, so I don’t know.”

PO Bowman knew that PO Yubini was the one who instructed all the men to exit the vehicle. When asked if she knew why PO Yubini wanted the men to exit, PO Bowman replied, “Cause of the alcohol, I guess.” However, when the investigator pointed out that PO Bowman’s response would seem to indicate that she had seen the open container by the time PO Yubini instructed the men to exit, PO Bowman replied, “I don’t know when I saw it. I’m just following what he’s saying.” When asked if she was aware that there was alcohol in the vehicle when PO Yubini

instructed the men to exit, PO Bowman replied, “Yeah, most likely. I just don’t remember when I saw the Hennessy bottle.” She could not recall where in the vehicle the bottle was located, or whether it was still in the vehicle when she first saw it.

PO Bowman knew that she eventually frisked one of the men, but she initially could not recall which one. She viewed the arrest photos of all three men and identified § 87(2)(b) as the man whom she frisked. She frisked him as soon as he reached the rear of the vehicle. When asked which parts of his body she frisked, PO Bowman replied, “Just, like, for weapons around his waist.” She denied that she searched § 87(2)(b) and denied that PO Yubini searched § 87(2)(b) or § 87(2)(b).

When asked to explain why she frisked § 87(2)(b) PO Bowman replied, “Cause if we were gonna bring them back to the precinct, in lieu of arrest, I want to make sure that they have nothing on them before they go in my car.” PO Bowman claimed that she already intended to transport the men to the stationhouse at the point they exited the vehicle. However, when asked to explain how she knew that the men were going to be transported, she replied, “Cause [PO Yubini] made them get out of the car.” She could not recall, however, if PO Yubini had already told her the men were going to be transported before she frisked § 87(2)(b). Ultimately, PO Bowman admitted that she simply “assumed” that the men would be transported from the scene because they were made to exit the vehicle. She also confirmed that protocol requires that an individual be searched, and not merely frisked, if he is going to be transported in a police vehicle, but said that she chose merely to frisk § 87(2)(b) at the time.

PO Bowman never claimed to have suspected that § 87(2)(b) possessed a weapon during the incident.

§ 87(2)(b) was arrested for § 87(2)(b).  
§ 87(2)(b) (BR01). § 87(2)(b) was arrested for § 87(2)(b).  
§ 87(2)(b) (BR01). § 87(2)(b) was arrested for § 87(2)(b).  
§ 87(2)(b) (BR01).

§ 87(2)(i)  
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§ 87(2)(g)

NYC Administrative Code §10-125 prohibits the possession, with intent to drink or consume, of an open container containing an alcoholic beverage in any public place. The interior of a stationary motor vehicle which is on any highway, street, or road constitutes a public place (BR07). If a an open container of an alcoholic beverage is found in a motor vehicle on the public highways, every operator and passenger of the vehicle is guilty of violating New York State Vehicle and Traffic Law §1227 (BR08). An officer is empowered to arrest an individual for violating NYC Administrative Code §10-125. People v. Kenyatta, 42 Misc. 3d 1201(A) (N.Y. City Crim. Ct., 2013) (BR09). A police officer's authority to effect a custodial arrest for a violation, other than a minor vehicular offense, remains valid even where the officer has the option of issuing a summons instead. People v. Rodriguez, 84 A.D.3d 500 (1<sup>st</sup> Dept. 2011) (BR10). Patrol Guide Procedure 212-11 states that an officer must have reasonable suspicion that an individual possesses a weapon in order to frisk him or her (BR11).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

- **Allegation (G) Abuse of Authority: At Rockland Avenue and St. Andrews Road in Staten Island, Police Officer Aldo Yubini searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation (H) Abuse of Authority: At Rockland Avenue and St. Andrews Road in Staten Island, Police Officer Stephanie Bowman searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

§ 87(2)(b) alleged that, after PO Yubini and PO Bowman frisked and searched all three men, PO Yubini entered the vehicle through both doors on the driver's side. PO Yubini searched throughout the vehicle, including under the seats, in the doors, in the glove compartment, and in

the center console armrest. Once PO Yubini finished searching, PO Bowman entered through the doors on the passenger side and performed a similar search.

PO Yubini denied that he or any other officer searched the vehicle on scene. He recounted that all three civilians repeatedly began asking why they had been pulled over once the officers finished frisking them. He tried to “defuse the situation” by explaining that they were only facing “a little summons for alcohol.” PO Yubini then called for Sgt. Cabello to respond to the scene, so that he could discuss the option of transporting the men to the stationhouse in order to issue them summonses.

PO Bowman denied that she or any other officer searched inside the vehicle on scene. Sgt. Cabello denied that any officer searched inside the vehicle when he was on scene (BR12).

§ 87(2)(g)

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§ 87(2)(g)

§ 87(2)(g)

- **Allegation (I) Abuse of Authority: At Rockland Avenue and St. Andrews Road in Staten Island, Sergeant Albert Cabello detained** § 87(2)(b)  
**Allegation (J) Abuse of Authority: At Rockland Avenue and St. Andrews Road in Staten Island, Sergeant Albert Cabello detained** § 87(2)(b)  
**Allegation (K) Abuse of Authority: At Rockland Avenue and St. Andrews Road in Staten Island, Sergeant Albert Cabello detained** § 87(2)(b)

It is undisputed that Sgt. Cabello authorized the detention and transport of § 87(2)(b) and § 87(2)(b) to the 122<sup>nd</sup> Precinct stationhouse. At multiple points during the CCRB interview, Sgt. Cabello noted that he had difficulty recalling details about the incident because it took place so long ago. Due to the fact that § 87(2)(b) did not file the complaint until nearly five months after the incident, Sgt. Cabello was interviewed at the CCRB almost nine months after the date of the incident.

Sgt. Cabello recounted that he arrived on scene and learned from PO Yubini that the vehicle contained cups and an open bottle of alcohol. PO Yubini also told Sgt. Cabello that the vehicle’s occupants became agitated when he requested identification, and he told Sgt. Cabello that he had informed the men that they would be issued summonses for the open container. Sgt. Cabello personally observed the cups and bottle of alcohol in the vehicle



Sgt. Cabello recalled that one or two of the civilians did not have valid ID. He could not recall exactly how many occupants lacked valid ID. He thought PO Yubini discovered this prior to his arrival on scene, but he was not certain. He did not personally obtain ID from any of the civilians. He could not recall which civilian was the driver of the vehicle, and he could not recall if the civilian who was driving had valid ID.

Sgt. Cabello determined that he wanted to transport all three men back to the 122<sup>nd</sup> Precinct stationhouse in order to issue them summonses. When asked for which offense the summonses were going to be issued, Sgt. Cabello said, “For the possession of alcohol, open container—” His representative then interjected, “Traffic infraction,” and Sgt. Cabello then continued, “Traffic infraction. I don’t remember. Like, there’s a few that were discussed.” Sgt. Cabello confirmed that there is a separate statute for open container in a vehicle. When asked if he intended to issue a summons for that specific offense, Sgt. Cabello replied, “I can’t remember what exactly, which one—again, I’m sorry, it was back in March. I don’t remember. I just know that we discussed what our options were for the occupants of the vehicle. That’s all I remember, and I don’t know the exact ones that were spoken of.”

Sgt. Cabello explained that there were two factors which led him to want to transport the men to the stationhouse to issue the summonses. The first factor was the difficulty in positively identifying all three men, due to some number of them lacking valid ID. At the stationhouse, officers would try to identify the civilians either by having someone bring their identification to the stationhouse, or by conducting computer checks by name and DOB, as if they have ever been arrested before a photograph will pop up confirming who they are. Officers also check the DMV and go through a seven-stage process to identify individuals. Officers can still issue summonses even if they are not able to obtain ID, provided they are able to confirm identity through other means.

The second factor was a safety concern Sgt. Cabello had about the location of the stop. He explained that the vehicle stop had taken place on a winding section of Rockland Avenue, near a bend in the road from which motorists frequently emerge at speed. Although § 87(2)(b)'s vehicle and the police vehicles were pulled off to the side of the road and were not in a lane of traffic, Sgt. Cabello feared a motorist might hit them. He also noted that the stop took place beside a wooded area, and that it was very dark at the location. He also noted that the civilians were slightly agitated and were questioning the validity of the stop, and he explained that he was worried about what might happen if a scuffle broke out at the location.

When asked to describe his authority to bring the men back to the stationhouse instead of issuing summonses on scene, Sgt. Cabello explained, “When we issue a summons, whether it be criminal or a moving violation, it’s in lieu of an arrest. And when we have that authority, I can detain you and bring them back to the stationhouse to do it there, to conduct a further investigation.” Aside from investigating the identities of the occupants, there was nothing else that Sgt. Cabello wanted to investigate back at the stationhouse.

PO Yubini also recounted that he wanted to transport the men to the stationhouse in order to verify their identities so he could issue summonses. He recounted learning that § 87(2)(b) did not have any form of identification with him, and that § 87(2)(b) only had an EBT card. He could not recall when exactly he learned that the two men did not have valid ID, and only recalled asking them all to produce ID when he brought them to the rear of the vehicle. PO Yubini explained that he did not want to remain at the location while attempting to verify the men’s identities, and he recounted telling Sgt. Cabello, “Listen, you know, it’s getting a little hectic. I’m

just gonna cuff ‘em up, bring ‘em back to the station, run ‘em, and do the summons back at the station. I can’t do it here.”

PO Yubini confirmed during his interview that he intended to issue open container summonses to the men, and that such a summons was issued in lieu of arrest. He similarly said that the men were technically under arrest when they were handcuffed and led to vehicles to be transported.

PO Bowman never personally obtained ID from any of the men. She was not sure if she ever saw PO Yubini do so. She did not recall any of the men lacking any form of ID. She could not recall if the men were handcuffed before Sgt. Cabello arrived on scene. She did not know who called the sergeant to the scene. She believed that PO Yubini briefed Sgt. Cabello once he arrived, and that Sgt. Cabello gave his approval for the men to be transported to the stationhouse so they could be issued summonses for open container in a vehicle. When asked why the summonses could not have been issued on scene, PO Bowman said, “We have the right to bring them back to the precinct.” When asked again to explain why the men were transported, PO Bowman said, “Because we just want to go back to the precinct.” PO Bowman ultimately said only that she did not make the decision to transport the men.

In his testimony, § 87(2)(b) made no mention of anyone lacking valid ID during the incident. As previously mentioned, § 87(2)(b) refused to provide a statement, and the investigation could not locate § 87(2)(b).

§ 87(2)(g)

NYC Administrative Code §10-125 prohibits the possession, with intent to drink or consume, of an open container containing an alcoholic beverage in any public place. The interior of a stationary motor vehicle which is on any highway, street, or road constitutes a public place (BR07). According to New York State Vehicle and Traffic Law §1227, if a an open container of an alcoholic beverage is found in a motor vehicle on the public highways, every operator and passenger of the vehicle is guilty of a traffic infraction (BR08). An officer is empowered to arrest an individual for violating NYC Administrative Code §10-125. People v. Kenyatta, 42 Misc. 3d 1201(A) (N.Y. City Crim. Ct., 2013) (BR09). A police officer’s authority to effect a custodial arrest for a violation, other than a minor vehicular offense, remains valid even where the officer has the option of issuing a summons instead. People v. Rodriguez, 84 A.D.3d 500 (1<sup>st</sup> Dept. 2011) (BR10). Patrol Guide Procedure 209-09 requires that an officer must obtain proof of identity and residence when he or she intends to issue a summons returnable to Criminal Court or the Traffic Violations Bureau. If doubt exists concerning the identity of the violator, the officer must remove him or her to the command for investigation (BR14).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b)  
§ 87(2)(b)

- **Allegation (L) Abuse of Authority: At the 122nd Precinct stationhouse, Sergeant Albert Cabello strip-searched § 87(2)(b)**  
**Allegation (M) Abuse of Authority: At the 122nd Precinct stationhouse, Sergeant Albert Cabello strip-searched § 87(2)(b)**  
**Allegation (N) Abuse of Authority: At the 122nd Precinct stationhouse, Sergeant Albert Cabello strip-searched § 87(2)(b)**

It is undisputed that PO Yubini strip-searched all three men, and that he found drugs secreted on the persons of § 87(2)(b) and § 87(2)(b) § 87(2)(b) recounted that he was strip-searched last.

PO Yubini recounted that he began escorting § 87(2)(b) to a vehicle at the scene of the stop, while Sgt. Cabello was escorting § 87(2)(b) ahead of him. PO Yubini saw § 87(2)(b) start to kick one of his legs, and a small object rolled out of § 87(2)(b)'s pant leg and off his foot onto the ground. The object looked like a ball of Saran wrap. PO Yubini remarked upon his observation but continued to escort § 87(2)(b) to a vehicle. After lodging § 87(2)(b) PO Yubini recovered the object, which was a number of glassines of crack cocaine bundled in Saran wrap. Upon arriving at the stationhouse, Sgt. Cabello informed PO Yubini that an additional red pill had been found on the seat beneath § 87(2)(b) in the vehicle in which he was transported.

Once at the stationhouse, PO Yubini searched each man. He searched § 87(2)(b) first, and while doing so he felt a hard bulge in his inner thigh area. § 87(2)(b) told PO Yubini, "I got something," and admitted that he had marijuana. PO Yubini relayed this information to Sgt. Cabello, who told he would have to strip search § 87(2)(b). PO Yubini did so and found a black plastic bag in his underwear containing marijuana and cocaine.

PO Yubini next searched § 87(2)(b) and he felt a hard, rocklike object in his groin and inner thigh area. § 87(2)(b) kept closing his legs and "tightening up" when PO Yubini felt near the object. Sgt. Cabello also authorized a strip search of § 87(2)(b) § 87(2)(b) was "very confrontational" and refused to comply with instructions throughout the strip search. When it came time to remove his underwear, § 87(2)(b) suddenly jerked away and tried to flush an object down the toilet. PO Yubini recovered the object, which was a quantity of crack cocaine.

PO Yubini then strip searched § 87(2)(b) at Sgt. Cabello's direction, as drugs had dropped § 87(2)(b)'s person at the scene and inside the police vehicle. No additional contraband was found during the strip search of § 87(2)(b).

Sgt. Cabello § 87(2)(g) confirmed that drugs fell from § 87(2)(b)'s pants on scene, and that officers found a single red pill on the seat beneath § 87(2)(b). Upon arriving at the stationhouse, Sgt. Cabello intended to arrest § 87(2)(b) for the drugs. At this point, Sgt. Cabello still intended merely to issue summonses to § 87(2)(b) and § 87(2)(b). However, the two men still had to be lodged in a cell. Sgt. Cabello could not point to any specific section of the Patrol Guide which indicated that the men had to be lodged in a cell. However, as officers would need to take steps to verify at least one of the men's identities, the men had to be detained somewhere and could not simply sit freely in the stationhouse. Sgt. Cabello also noted that the men were brought to the stationhouse on a summons in lieu of arrest.

Sgt. Cabello further explained that every civilian must be searched before being lodged in the cells, so as to prevent weapons, contraband, or other potentially harmful items from getting into the cells. This search is performed regardless of the reason for which the civilian is being lodged in the cells, which is to say that it must be performed whether or not that civilian is under arrest.

Sgt. Cabello initially did not recall authorizing a strip search of § 87(2)(b) and later made equivocal statements regarding whether he could definitively recall if he authorized a strip search or not. In Sgt. Cabello's recollection, PO Yubini reported to him that he had felt a hard object near § 87(2)(b)'s rear end, and that § 87(2)(b) reached into his own pants, retrieved marijuana, and gave it to PO Yubini. Sgt. Cabello had no recollection of crack cocaine being found on § 87(2)(b). He viewed the command log arrest entry and arrest report for § 87(2)(b) both of which indicate that § 87(2)(b) was strip searched, but these did not refresh his recollection as to whether he ever authorized a strip search of § 87(2)(b) (BR15; BR01). The command log entries were not written in his handwriting. He guessed that his recollection could be incorrect, or that the desk sergeant could have authorized a strip search without his knowledge, or that the person who wrote on the command log may have been confused by PO Yubini's account and mistakenly thought that a strip search occurred.

Sgt. Cabello did recall authorizing strip searches for § 87(2)(b) and § 87(2)(b) and provided the same basis for them as PO Yubini did. Sgt. Cabello was present during the strip search of § 87(2)(b).

§ 87(2)(g)

Patrol Guide Procedure 208-05 states that a strip search may only be conducted when an officer reasonably suspects that weapons, contraband, or evidence may be concealed upon the person or in the clothing in such a manner that they may not have been discovered by previous searches (BR16).

§ 87(2)(g)

§ 87(2)(g)

- **Allegation (O) Abuse of Authority: At the 122nd Precinct stationhouse, an officer threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) alleged that, as PO Yubini strip-searched him, another plainclothes officer stood nearby and watched. That officer pointed a Taser at him and told him he would shoot him with it if he made any wrong moves during the strip search. § 87(2)(b) described the subject officer as white man in his late 40s who was 5'9"-5'10" tall, had a somewhat athletic build, and who had red hair and a goatee.

Sgt. Cabello did not witness the strip search of § 87(2)(b) and did not know which officers were involved aside from PO Yubini. Typically, at least two officers are present during a strip search. Sgt. Cabello denied having any knowledge of an officer pointing a Taser at § 87(2)(b) during the strip search. He denied that Anticrime officers carry Tasers, and also denied that any Anticrime officers at his command resembled the description provided by § 87(2)(b).

PO Yubini did not recall any other officers assisting him during the strip search of § 87(2)(b). He did remember that, after the chaotic result of § 87(2)(b)'s strip search, there were "a lot people standing around, like, outside the room." He recounted that he instructed § 87(2)(b) to move slowly and not to take any sudden movements. When asked if an officer aimed a Taser at § 87(2)(b) during the strip search, PO Yubini replied, "I don't recall that." He denied that any Anticrime officer carries a Taser, and denied knowing any Anticrime officer who resembled the description provided by § 87(2)(b).

None of the male officers listed on the 122<sup>nd</sup> Precinct roll call from the time of the strip searches is listed as having red hair in the NYPD database of officer pedigree information, nor does any of those officers appear to have red hair in the photographs appearing in the database (BR17). The roll call does not show any officers with assignments which would typically require them to work in plainclothes. The investigation lacked any further evidence to aid in identifying the subject officer.

§ 87(2)(g)

- **Allegation (P) Abuse of Authority: At Rockland Avenue and St. Andrews Road in Staten Island, Sergeant Albert Cabello seized § 87(2)(b)'s property.**

It is undisputed that the officers transported § 87(2)(b)'s vehicle back to the stationhouse, and that it was eventually seized and vouchered (BR18). It is also undisputed that § 87(2)(b) and § 87(2)(b) were both eventually charged with felony § 87(2)(b) due to the drugs found in their possession. As previously discussed, Sgt. Cabello directed that all three men be transported back to the stationhouse before officers discovered the large amount of controlled substances in § 87(2)(b) and § 87(2)(b)'s possession. As there were no other occupants of § 87(2)(b)'s vehicle, there was no remaining civilian who could have driven the vehicle from the scene. The vehicle stop did not occur in a location at which the officers could have left the empty vehicle.

Patrol Guide Procedure 218-19 states that a vehicle must be seized if it was used to transport a large enough amount of controlled substance to incur a felony charge (BR19).

§ 87(2)(g)

- § 87(4-b), § 87(2)(g) [REDACTED]

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) [REDACTED] has been a party (BR22). § 87(2)(b) [REDACTED]
- This is the first CCRB complaint to which § 87(2)(b) [REDACTED] has been a party. § 87(2)(b) [REDACTED]
- This is the first CCRB complaint to which § 87(2)(b) [REDACTED] has been a party (BR22).
- This is the first CCRB complaint to which § 87(2)(b) [REDACTED] has been a party (BR22).
- PO Aldo Yubini has been a member of service for 12 years and has been a subject in three CCRB complaints and four allegations, of which one was substantiated (see officer history):
  - Case #201308483 involved a substantiated allegation of refusal to obtain medical treatment against PO Yubini. The Board recommended a Command Discipline and the NYPD imposed Instructions.
- PO Stephanie Bowman has been a member of service for nine years and has been a subject in two CCRB complaints and two allegations, of which none was substantiated (see officer history).
- Sgt. Albert Cabello has been a member of service for 12 years and has been a subject in four CCRB complaint and seven allegations, of which none was substantiated (see officer history).
- § 87(2)(g) [REDACTED]

### **Mediation, Civil and Criminal Histories**

- This case was not suitable for mediation.
- As of February 15, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (BR23).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 8

Investigator:	_____	<u>Inv. Daniel Giansante</u>	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date